

Service Date: March 3, 1989

DEPARTMENT OF PUBLIC SERVICE REGULATION
BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MONTANA

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IN THE MATTER of the Application)	UTILITY DIVISION
of the BUTTE WATER COMPANY for)	
Authority to Increase Rates and)	DOCKET NO. 88.9.29
Charges for Water Service to its)	
Butte, Montana Customers.)	ORDER NO. 5387a

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SUPPLEMENTAL ORDER ON NONCOMPLIANCE
WITH ADEQUACY OF SERVICE ORDER

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BACKGROUND

On November 21, 1988, after proper notice, the Montana Public Service Commission (Commission) held a public hearing in the City Council Chambers, Butte, Montana to consider the merits of Applicant Butte Water Company's (BWC) proposed interim water rate adjustment and to consider the adequacy of service provided to water subscribers in BWC's Butte, Montana service area.

On December 2, 1988, the Commission issued an Interim Rate Order, based upon the hearing of November 21, 1988, allowing

an increase of \$460,166 in annual revenue on an interim basis. The interim rate increase is subject to rebate with interest at the rate of 13 percent annually, should the final order in this docket determine a lesser increase is warranted.

On December 21, 1988, the Commission issued an Adequacy of Service Order based upon the hearing of November 21, 1988 and the testimony and admissions of BWC personnel. The Commission directed BWC to commence capital improvement projects identified in the order and to file a compliance plan with the Commission within 60 days of the date of the order, or face sanctions.

On February 21, 1989, the Commission granted a two-day extension to BWC to file its compliance plan as required by the adequacy of service order by February 23, 1989 at noon. BWC timely filed a Response to Adequacy of Service Order.

FINDINGS

The Commission finds BWC's Response to Adequacy of Service Order insufficiently responsive and a failure and refusal to comply with a lawful order of the Commission. Specifically the deficiencies in BWC's response are described as follows:

(a) Filtration. The order required BWC to begin the planning process for filtration facilities pursuant to the dates outlined in the Montgomery Study, i.e. no later than

June 1, 1989. [Order No. 5387, Findings of Fact Nos. 11, 12 and 47(1).] Filtration facility is required not only to comply with the Safe Drinking Water Act, but also to correct the problems of color, smell and dirty water. BWC failed to demonstrate that it will begin planning immediately, no later than June 1, 1989, the construction of filtration facilities for the Big Hole water source, as required by the Safe Drinking Water Act of 1986 as well as by the complaints of BWC customers as to color, smell and dirty water. Instead, BWC makes an unsubstantiated proposal to bring in a substitute water source to replace a more substantial source of water which is in the rate base, i.e., the Big Hole system.

BWC states that Silver Lake Water System will be available to BWC customers during the 1990 spring run-off. BWC does not detail the necessary procedures and timetables required to use the Silver Lake Water System for Butte customers. It appears that there are serious challenges and impediments to the use of the Silver Lake Water System, including but not limited to the following: (1) the water rights are designated for industrial use, and would require lengthy process to be changed to domestic use; (2) there are objections and contestants to BWC's water rights claims; (3) the owner(s) of the Silver Lake Water System will not lease the system unless the Commission exempts them from public utility status (Docket No. 89.1.1). BWC misleads the Commission and its customers in stating that it could have the Silver Lake Water System on line in a short period of time without the requirement for filtration, and therefore at "much lower cost." BWC presents no evidence that the Silver Lake Water System will not require filtration. This response does not meet the requirement of the order to begin planning filtration facilities by June 1, 1989, to be completed by June 1, 1992.

BWC's response to the order to begin the design of filtration facilities on the existing water supply has amounted to pure speculation and not a concrete response to the Commission's specific directive. There are too many unknowns to present this optimistic future plan as compliance with this Commission's Order No. 5387.

(b) Distribution System. Order No. 5387 directed "BWC to commence improvements for the distribution system beginning in the 1989 construction season." The Commission made it clear that it expected a "realistic timetable developed by BWC

for the completion of the improvements...." |Finding of Fact No. 47(2)-

BWC's response is not in compliance with the directive to begin repairs on the existing system. The response is speculative and unsubstantiated in proposing that Butte-Silverbow fix those portions of the distribution facilities in need of repair. The Commission reminds BWC that BWC is the public utility which has the duty to provide adequate service, including adequate facilities to provide that service. BWC provides no support for the proposal to Butte-Silverbow citizens to make the necessary repairs, nor any substantiation for BWC's belief that the proposal is receiving a positive reaction from Butte-Silverbow, nor that this proposal will result in improvements during the 1989 construction season, as ordered by the Commission.

BWC claims in the February 23, 1989 compliance filing that it does not have funds to commence capital improvements on the distribution system. The Commission plainly stated that no utility would be allowed "to argue that it cannot make necessary improvements because it does not have the financial resources." (Finding of Fact No. 48.)

The Commission has instructed BWC to begin improvements to the distribution system in the 1989 construction season and to establish a timetable. BWC has flagrantly violated this order in stating that it cannot do so for alleged financial reasons, despite the Commission warning that it will not accept this excuse as relieving BWC to fulfill its duty as a public utility to provide adequate service.

Based upon BWC's filed responses to data requests in this docket, BWC had \$1,062,532 in cash on December 31, 1988. (BWC Response to MCC Data Request No. 2, Balance Sheet, Docket No. 89.9.29.) The Commission will not involve itself in the management decisions and direct a utility how to expend its funds. |However, the Commission takes notice that in the prior BWC rate case, Docket No. 87.6.30, BWC testified that the funds were earmarked for capital improvements, i.e., the connection and integration of the Silver Lake Water System. (TR, October 27, 1981, pp. 138-140.)-

The Commission finds BWC's response on distribution facilities unresponsive and not in compliance with its order.

The Commission further finds that BWC was evasive in claiming that it "does not have available funds or a source of capital from which it can commence improvements in the distribution

system beginning in the 1989 construction season." (Response to Adequacy of Service Order, Discussion, II, B, p. 6.)

(c) Storage. Order No. 5387 directed BWC to begin planning improvements to the distribution system water storage to coincide with the construction of the filtration facilities. In response, BWC states that it will address the water storage facilities requirements in the context of the filtration plant requirements. However, in response to the filtration requirements and design of filtration plant, BWC stated that it proposed to replace the Big Hole system with water from the Silver Lake Water System, allegedly obviating the need for filtration. The Commission finds this response to be evasive and nonresponsive, amounting to a failure and refusal to obey the lawful order of the Commission.

BWC further states, in contrast to its claims that filtration facilities will be unnecessary, that it will commence design and construction of the distribution system water storage "to coincide with the construction of the filtration facilities." BWC then states that formal planning and design of the distribution system water storage will coincide with that of filtration, i.e., formal planning and design to commence on July 1, 1990 according to BWC. BWC was directed to begin the process of design of filtration facilities and storage facilities no later than June 1, 1989.

Therefore, the Commission finds this response a failure to comply with Order No. 5387.

The Commission finds that BWC's response with respect to its plan to improve filtration facilities, storage facilities and distribution facilities is unresponsive and not in compliance with Order No. 5387. BWC ignores the directive to show that it will begin planning and designing filtration and storage facilities before June 1, 1989 to have in place by June 1, 1992. The Commission finds that a speculative proposal for an alternative water source cannot be substituted for the requirement to filter the water, when it has not been demonstrated that the proposed alternative is feasible in the near term, if at all, and where, if feasible, the alternative source will also require filtration.

The Commission further finds that BWC is in continuing violation of its duty to provide adequate service. By its own admissions and testimony at open hearing on November 21, 1988, BWC has continued to provide inadequate service. The Commission gave BWC sixty (60) days from the date of its Order No. 5387, December 21, 1988, to comply with the order (1) to begin the process of

developing identified capital improvement projects, and (2) to file a compliance plan showing how it would fulfill its responsibility to provide adequate service as outlined in the order.

CONCLUSIONS OF LAW

1. The Montana Public Service Commission is invested with full power of supervision, regulation and control of public utilities subject to its jurisdiction. § 69-3-102, MCA.

2. BWC is a public utility subject to the Commission's jurisdiction. § 69-3-101, MCA

3. BWC as a public utility has the duty to furnish reasonably adequate service and facilities at reasonable and just rates. § 69-3-201, MCA.

4. The Commission, upon a hearing and upon a subsequent finding that service is inadequate and/or that reasonable service cannot be obtained, has the jurisdiction and authority to direct a public utility to take the necessary steps to ensure adequate service to existing customers now and in the reasonably foreseeable future § 69-3-330, MCA.

ORDER

The Commission, having properly investigated service provided by BWC, held a full hearing and properly found service inadequate, and ordered the commencement of a capital improvements program and submission of a compliance plan describing how BWC will satisfy the requirements of the order to provide adequate service to the present Butte customers of Butte Water Company.

1. Order to file compliance within seven (7) days of this order. The Commission orders BWC to file within seven (7) days a

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compliance plan showing how it will make the necessary improvements to the water system pursuant to Order No. 5387.

DONE AND DATED this 2nd day of February, 1989 by a vote of 5-0.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

CLYDE JARVIS, Chairman

JOHN B. DRISCOLL, Commissioner

HOWARD L. ELLIS, Commissioner

WALLACE W. "WALLY" MERCER, Commissioner

DANNY OBERG, Commissioner

ATTEST:

Ann Purcell
Acting Commission Secretary

(SEAL)

NOTE: Any interested party may request that the Commission reconsider this decision. A motion to reconsider must be filed within ten (10) days. See ARM 38.2.4806.